

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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<b>In re</b>	:	<b>Chapter 11</b>
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<b>CANO HEALTH, INC., et al.,</b>	:	<b>Case No. 24-10164 ( )</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Joint Administration Requested)</b>
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**MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a), 363, AND 503(b) FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF (A) PATIENT CARE, SAFETY, AND OTHER CRITICAL VENDORS, (B) LIEN CLAIMANTS AND (C) 503(b)(9) CLAIMANTS, AND (II) GRANTING RELATED RELIEF**

Cano Health, Inc. and certain of its subsidiaries, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases, respectfully represent as follows:

**Relief Requested**

1. By this motion (the “**Motion**”), pursuant to sections 105(a), 363, and 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors request entry of interim and final orders (i) authorizing, but not directing, the Debtors to pay in the ordinary course of business and consistent with customary past practice, based on their sound business judgment, certain prepetition claims of (a) vendors whose goods and services are necessary to provide essential healthcare services, maintain the safety of their medical facilities or are otherwise essential to the Debtors’ operations or the operations of their affiliated provider practices

<sup>1</sup> The last four digits of Cano Health, Inc.’s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/CanoHealth>. The Debtors’ mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.



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(the “**Critical Vendors**”, and such claims, the “**Critical Vendor Claims**”); (b) service providers that may be entitled to assert statutory, common law, or possessory liens against the Debtors and their property if the Debtors fail to pay for certain goods delivered or services rendered (the “**Lien Claimants**”, and such claims, the “**Lien Claims**”); and (c) vendors that have delivered goods to the Debtors in the ordinary course of business within twenty (20) days of the Petition Date (as defined below) (the “**503(b)(9) Claimants**”, and such claims, the “**503(b)(9) Claims**” and, together with the Critical Vendors and Lien Claimants, the “**Trade Claimants**” and, the Trade Claimants’ prepetition claims, the “**Trade Claims**”); and (ii) granting related relief.

2. Proposed forms of order granting the relief requested herein on an interim basis and, pending a final hearing on the relief requested herein, on a final basis are annexed hereto as **Exhibit A** (the “**Proposed Interim Order**”) and **Exhibit B** (the “**Proposed Final Order**”) and, together with the Proposed Interim Order, the “**Proposed Orders**”), respectively.

3. As set forth below, the Debtors’ vendors and suppliers are critical to the Debtors’ ability to maintain safe and effective medical centers and pharmacies, and to provide high-quality health and wellness care to their patients. The medical centers and pharmacy locations run by the Debtors and their affiliated provider practices require a steady supply of goods and services from Patient Care and Safety Vendors (as defined below) and other Critical Vendors to provide indispensable healthcare services and to maintain safe medical centers. Any disruption in the provision of such goods and services would have far-reaching and adverse economic and operational impacts on the Debtors’ business and could harm the health and well-being of the Debtors’ patients.

4. The Debtors work with service providers to, among other things, repair medical equipment, comply with medical waste disposal and environmental regulations, and

provide laboratory and radiological services. In many cases, these goods and services are highly specialized and, in some cases, may give rise to mechanics', possessory, or other liens. In most cases, finding replacement vendors for these goods and services on a timely basis would be extremely difficult and costly. Even where alternative vendors exist, the time and costs associated with switching from one vendor to another could irreparably harm the Debtors' business and ultimately harm the Debtors' patients.

5. By this Motion, the Debtors are requesting authority to pay Trade Claims in an aggregate amount not to exceed (i) \$5,689,000, upon entry of the Proposed Interim Order to be used to satisfy Trade Claims that will become due during the period between the Petition Date and the final hearing on the Motion (estimated to be thirty (30) days after the Petition Date) (the "**Interim Period**"); and (ii) \$8,036,000, upon entry of the Proposed Final Order, inclusive of amounts paid under the Proposed Interim Order, in each case as they become due in the ordinary course of business (collectively, the "**Critical Vendor Cap**"). The following table summarizes the amounts of Trade Claims per category the Debtors are requesting authority to pay pursuant to the Motion:

<b>Category of Trade Claims</b>	<b>Amount Seeking Authority to Pay on Interim Basis</b>	<b>Amount Seeking Authority to Pay on Final Basis (Inclusive of Interim Amount)</b>
Critical Vendor Claims	\$2,939,000	\$4,409,000
Lien Claims	\$130,000	\$221,000
503(b)(9) Claims	\$2,620,000	\$3,406,000
<b>Total Trade Claims:</b>	<b>\$5,689,000</b>	<b>\$8,036,000</b>

### **Background**

6. Beginning on February 4, 2024 (the "**Petition Date**"), the Debtors each commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The

Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

7. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Bankruptcy Rules**”).

8. The Debtors, together with their non-debtor affiliates, are one of the largest independent primary care physician groups in the United States. The Debtors commenced their chapter 11 cases on a prearranged basis with the support, pursuant to the terms of a restructuring support agreement (the “**Restructuring Support Agreement**”), of creditors holding approximately 86% of the Debtors’ secured revolving and term loan debt and approximately 92% of the Debtors’ senior unsecured notes (collectively, the “**Consenting Creditors**”). With the support of the Consenting Creditors, the Debtors are seeking to implement a comprehensive restructuring, which may be implemented through a chapter 11 plan or a sale of substantially all of the Debtors’ assets. The Debtors expect to file a chapter 11 plan and disclosure statement in short order, consistent with the terms of the Restructuring Support Agreement, and to efficiently and expeditiously proceed through these cases towards emergence.

9. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Mark Kent in Support of Debtors’ Chapter 11 Petitions* (the “**Kent Declaration**”) and the *Declaration of Clayton Gring in Support of the Debtors’ First Day Relief* (the “**Gring**

**Declaration**” and, together with the Kent Declaration, the “**First Day Declarations**”), each filed contemporaneously herewith and incorporated by reference herein.

### **Jurisdiction**

10. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11. Pursuant to Local Bankruptcy Rule 9013-1(f), the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

### **The Trade Claimants**

#### **I. Patient Care and Safety Vendors, and Other Critical Vendors.**

12. The Debtors are in the highly complex and heavily regulated business of providing essential health and wellness care to patients across 95 medical centers and approximately 630 affiliated provider practices. The Debtors’ ability to continue generating revenue and operating their business, and thus the success of these chapter 11 cases, fundamentally depends on the Debtors’ ability to effectively manage the intricate process by which patients are treated, from the initial point of scheduling appointments through the complex process by which patients are provided with medical services, billed, and payors pay, for such medical services. The Debtors rely on products and services provided by Critical Vendors that enable

them to effectively manage this complex process, and intend on paying only those that are *truly* essential to the Debtors' operations and business, and that will benefit the Debtors' estates.

13. As set forth in the Gring Declaration, to mitigate the risks to the Debtors' business by failing to pay prepetition amounts owed to Critical Vendors, the Debtors and their advisors engaged in a comprehensive process to (a) identify those vendors that are "critical" to the Debtors' business and go-forward operation and (b) quantify the relief necessary to avoid immediate and irreparable harm to the Debtors and their patients at the outset of these chapter 11 cases as a result of nonpayment of Critical Vendor Claims. In this process, the Debtors, with the assistance of their restructuring professionals, assessed a variety of qualitative and quantitative factors, including:

- whether a vendor was located in a jurisdiction that would likely honor the applicability of the Bankruptcy Code;
- the goods or services provided by a vendor;
- whether goods or services are provided pursuant to a contract or on a purchase-order basis;
- the Debtors' ability to continue operating while transitioning business to an alternative supplier, if available, and how long such a transition would take;
- the degree to which replacement costs (including pricing, transition expenses, professional fees, and lost sales or future revenue) would exceed the amount of a vendor's prepetition claim;
- which suppliers would be prohibitively expensive or practically difficult to replace;
- which suppliers would present an unacceptable risk to the Debtors' operations given the volume or type of essential services or products that such suppliers provide;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;

- whether a vendor is currently refusing to supply the Debtors with goods or services or is refusing to do so without cash up front; and
- whether the Debtors' inability to pay all or part of a vendor's prepetition claim could trigger financial distress for the applicable vendor, leading to future difficulty of that vendor's ability to perform.

14. After a thorough analysis involving an assessment applying the above factors, the Debtors designated certain vendors as necessary to continue operations without negatively impacting patient care and, thus, preserve value for the benefit of the estates and creditors. These Critical Vendors represent approximately 3.1% of the Debtors' vendors with outstanding payables as of the Petition Date. The relief requested in this Motion seeks to pay prepetition amounts owed to the Critical Vendors in an amount not to exceed the Critical Vendor Cap of \$2,939,000 on an interim basis—which represents approximately 6.7% of overall prepetition amounts owed to vendors—and \$4,409,000 on a final basis—which represents approximately 10.0% of overall prepetition amounts owed to vendors.

15. The Debtors' selection process balanced the need to ensure that these chapter 11 cases do not disrupt their operations or negatively impact patient care, with the need to limit the expenditure of estate resources. In that regard, the Debtors undertook a lengthy process to ensure that the Critical Vendors truly represent those vendors most vital to the Debtors' ongoing operations. Paying targeted prepetition claims of Critical Vendors benefits the Debtors' estates, both monetarily and operationally, by preserving liquidity and enabling the Debtors to operate smoothly during these chapter 11 cases.

16. The Critical Vendors generally fall into four categories, each as defined below: (a) Patient Care and Safety Vendors; (b) RCM Vendors; (c) Information Technology and Critical Administrative Services Vendors; and (d) Patient Shuttle and Nutrition Vendors.

*(a) Patient Care and Safety Vendors*

17. As healthcare providers, the Debtors operate in one of the most heavily regulated and closely scrutinized industries in the country. To operate and maintain their medical centers and pharmacy locations, the Debtors rely on a constant flow of supplies and services, including medical supplies, medical equipment, medication, and regular maintenance services from certain vendors (the “**Patient Care and Safety Vendors**”). The Debtors’ ability to succeed in the healthcare space relies, among other things, on their business relationships with Patient Care and Safety Vendors. In some cases, local, state, and/or federal law requires that the Debtors maintain contracts with certain Patient Care and Safety Vendors, including those needed to comply with regulations applicable to medical centers and pharmacies.

18. In the ordinary course of business, the Debtors incur obligations to their Patient Care and Safety Vendors for such services—the payment of which is necessary to ensure the health, safety, environmental, and regulatory compliance of the Debtors’ operations. A disruption in the supply of such goods and services could jeopardize the Debtors’ ability to safely maintain and operate their medical centers, compromising the Debtors’ ability to maintain their high standards of patient care and safety. The extensive, comprehensive regulations and requirements to which the Debtors are subject can only be fulfilled through uninterrupted access to the essential goods and services provided by Patient Care and Safety Vendors.

19. Absent the ability to continue payment to Patient Care and Safety Vendors, the Debtors risk harming not only the going-concern value of their business, but also the health and safety of their patients, the integrity of their facilities, the safety of doctors and staff, compliance with regulatory laws, and the quality of medical care provided.

20. Patient Care and Safety Vendors include those vendors who provide equipment, supplies, technology, products, and services that are mission-critical to the operation



of the Debtors' business, such as prescription drugs, medical equipment and supplies, regulatory compliance, internal audits, payment processing, digital tools, and operations. In many instances, Patient Care and Safety Vendors are the only vendors able to produce or deliver products or services sufficient to meet the Debtors' operational needs. If certain Patient Care and Safety Vendors refuse to provide products and services to the Debtors after the Petition Date on account of unpaid prepetition claims, the Debtors would be left scrambling to procure new vendors. This process could take several months, resulting in a detrimental impact to the health of the Debtors' patients, customer interface, brand messaging efforts, and general operational stability. In some cases, there may be no true replacement if a relationship with a Patient Care and Safety Vendor falters. Even where alternative vendors exist, the time and costs associated with switching from one vendor to another would likely be significant and detrimental to the Debtors' estates, the quality of patient care, and the health of the Debtors' patients.

21. Any attempt by Patient Care and Safety Vendors to refuse delivery of goods or to refuse to provide services on account of nonpayment of their prepetition claims could increase the risk of harm to patients and employees at the various medical centers and pharmacies operated by the Debtors, and could result in significant liability or expense to the Debtors' estates. Accordingly, the Debtors request authority to pay the claims of Patient Care and Safety Vendors as they become due and payable, and to continue paying them in the ordinary course of business and consistent with customary past practice. The Debtors intend to pay prepetition claims of Patient Care and Safety Vendors only where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs.

22. The Debtors estimate that, as of the Petition Date, approximately \$266,000 is outstanding on account of Patient Care and Safety Vendors' claims, approximately \$178,000 of which is due or will become due and payable during the Interim Period.

***(b) Revenue Cycle Management Critical Vendors***

23. The Debtors and their affiliated provider practices require the services of certain Critical Vendors that provide revenue cycle management services (such Critical Vendors, the "**RCM Vendors**") to effectively operate their business. Revenue cycle management is the process by which healthcare providers track patient care episodes from initial registration and appointment scheduling through the final payment by patients and/or payors (such as insurance providers, Medicare, or Medicaid) for medical services provided. This process involves numerous parties and is highly complex. The services provided by the RCM Vendors include collecting information from patients, such as insurance coverage before the patient arrives for an appointment, coding medical procedures and diagnoses, determining the appropriate billable charges for medical services provided, insurance identification chart abstraction, submitting claims to insurance companies, collecting and processing payments from patients, and collecting payments from third-party payors.

24. Revenue cycle management is directly related to the Debtors' ability to generate revenue—without the RCM Vendors to help manage this process, the Debtors would be unable to bill and collect payments for medical services provided to patients. The Debtors do not have the technology or personnel necessary to manage this complex process without the services provided by the RCM Vendors. Further, it would be impossible to replace the RCM Vendors without causing significant disruption to the business—the RCM Vendors have longstanding relationships with the Debtors, are ingrained with the Debtors' technology and software, and have

a deep understanding of the Debtors' complex business and how it operates. Even where alternative vendors exist, the time and costs associated with switching from an RCM Vendor to a new provider would likely be significant and detrimental to the Debtors' estates.

25. If the RCM Vendors are not paid prepetition amounts, they may refuse to continue providing services to the Debtors, endangering a critical mechanism of generating revenue and irrevocably damaging the Debtors' relationships with patients and the various third parties involved in the revenue management cycle process, including insurers, physicians, and other healthcare partners. As of the Petition Date, the Debtors estimate that approximately \$1,757,000 is outstanding on account of obligations to the RCM Vendors, approximately \$1,171,000 of which is due or will become due and payable during the Interim Period.

*(c) Information Technology and Administrative Services Critical Vendors*

26. The Debtors and their affiliated provider practices also rely on Critical Vendors for the provision of business-critical information technology systems, products, and administrative services (the "**Information Technology and Administrative Services Critical Vendors**"). For example, some of the Information Technology and Administrative Services Critical Vendors provide the Debtors with the specialized information technology infrastructure necessary for the administration of the Debtors' day-to-day operational activities, including certain payroll, finance, medical operation, and billing support functions. Even a short interruption in the provision of any of these products or services could have potentially disastrous effects on the Debtors' business and daily operations, with compounding long-term effects on the Debtors' reputation and, in turn, the success of these chapter 11 cases. Most of these Critical Vendors are virtually irreplaceable due to the specialized nature of the products and services provided to the Debtors. Even where alternative vendors exist, the time and costs associated with switching

from an Information Technology and Administrative Services Critical Vendor to a new provider would likely be significant and detrimental to the Debtors' estates due to the extensive development timeline required to produce replacement technologies.

27. As of the Petition Date, the Debtors estimate that approximately \$1,679,000 is outstanding on account of obligations to Information Technology and Administrative Services Critical Vendors, approximately \$1,119,000 of which is due or will become due and payable during the Interim Period.

*(d) Patient Shuttle and Nutrition Vendors*

28. In the ordinary course of the Debtors' business, the Debtors utilize crucial transportation services to shuttle patients to and from the Debtors' medical centers, pharmacies, and affiliated provider practices (the "**Patient Shuttle Vendors**"). The Debtors' elderly and disabled patients rely on transportation services provided by the Patient Shuttle Vendors in order to safely access healthcare that the Debtors provide at their medical centers, pharmacies, and affiliated provider practices. Additionally, the Debtors are dependent on specialized catering and dining providers that prepare nutritionally balanced meals for the Debtors' patients that are tailored to intake restrictions, allergies, and dietitian and/or physician input (the "**Nutrition Vendors**" and, together with the Patient Shuttle Vendors, the "**Patient Shuttle and Nutrition Vendors**"). Even where alternative vendors exist, the time and costs associated with switching to a new provider would likely be significant and detrimental to the Debtors' estates, and could have an adverse effect on patient health. Even a temporary interruption of services provided by the Patient Shuttle and Nutrition Vendors could cause certain of the Debtors' patients to miss appointments or go malnourished, potentially threatening such patients' health and well-being, and could cause

irreparable harm to the Debtors' go-forward business, goodwill, employees, patients, and market share.

29. To maintain stability during this critical stage of these chapter 11 cases and to avoid jeopardizing the health of the Debtors' patients, and the Debtors' business operations going forward, the Debtors request authority to pay the claims of the Patient Shuttle and Nutrition Vendors as they become due and to continue paying them in the ordinary course of business and consistent with customary past practice, including on account of prepetition claims. As of the Petition Date, the Debtors estimate that approximately \$707,000 is outstanding on account of obligations to Patient Shuttle and Nutrition Vendors, approximately \$471,000 of which is due or will become due and payable during the Interim Period.

## **II. Lien Claimants**

30. The Debtors routinely do business with Lien Claimants, who perform various services for the Debtors, including the installation and repair of specialized medical equipment in the Debtors' medical centers and pharmacies, maintenance, improvement, renovation, and construction of the Debtors' medical centers and pharmacies, all of which are necessary for the Debtors' business.

31. The medical centers and pharmacies operated by the Debtors may require specialized maintenance and repair services provided by third parties on a regular or *ad hoc* basis. Repairing malfunctions and performing routine maintenance of the Debtors' medical equipment are essential parts of the Debtors' operations, and also require the skill of specialized third party servicers. Such specialized repairs and maintenance ensure the uninterrupted operations of the Debtors' medical centers and pharmacies, and ensure the Debtors continue to provide patient care in accordance with their high standards of service and safety for patients and employees.

32. The Debtors may also undertake expansion, development, renovation, and maintenance opportunities across their facilities. Projects could involve the use of mechanics, electricians, and other skilled labor. Non-payment of Lien Claims could lead to shortages of skilled labor, labor disputes, work stoppages, and disputes with contractors or subcontractors. Any of these events would affect the Debtors' anticipated costs and timetables for projects. The cost of a project may vary significantly from initial expectations, and the Debtors may have a limited amount of capital resources to fund cost overruns which, in turn, would delay completion until adequate funding is available. Such delay would be value-destructive to the Debtors' estates and business.

33. The Debtors' business requires them to partner with certain shippers to conduct smooth and fast deliveries of expensive medical equipment, and highly perishable medical supplies and medication, such as intravenous liquids, insulin, injections, vaccines, and other perishable medications that require refrigeration or special handling. Possible loss of long-term relationships with the shippers could result in catastrophic injuries to patients receiving treatment in the Debtors' facilities and may cause serious reputational, financial, and logistical damage to the Debtors' business.

34. Under certain non-bankruptcy laws, the Lien Claimants may be able to assert liens on goods in their possession or on property they improved, as applicable, to secure payment of the charges or expenses incurred in connection with these prepetition obligations. In the event these claims remain unpaid, the Lien Claimants could attempt to assert liens or otherwise impede the Debtors' use of property until their claims are satisfied and their liens redeemed. The Lien Claimants' possession and retention of the Debtors' goods and supplies, or enforcement of a mechanic's lien, would disrupt the Debtors' operations and affect the Debtors'

ability to efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors' estates in many cases would likely be greater than the applicable Lien Claims. Pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of any valid possessory lien, which would drain estate assets.

35. To continue using the Lien Claimants' services, the Debtors request authority to pay the prepetition Lien Claims as they become due and payable and to continue paying Lien Claims in the ordinary course of business. The Debtors seek authority to pay only those amounts of Lien Claims that the Debtors determine to be necessary or appropriate to (a) obtain the release of critical or valuable goods and (b) induce the Lien Claimants to continue performing and otherwise supporting the Debtors' operations on a postpetition basis. The Debtors estimate that, as of the Petition Date, approximately \$221,000 is outstanding on account of Lien Claims, approximately \$130,000 of which is due or will become due during the Interim Period.

### **III. 503(b)(9) Claimants**

36. The Debtors may have received certain inventory, goods, and/or materials from 503(b)(9) Claimants within the twenty (20) days immediately preceding the Petition Date, thereby giving rise to claims that are accorded administrative priority under section 503(b)(9) of the Bankruptcy Code. Many of the Debtors' relationships with the 503(b)(9) Claimants are not governed by long-term contracts. Instead, the Debtors obtain much of their medical supplies and equipment from such claimants on an order-by-order or as-needed basis. As a result, a 503(b)(9) Claimant may refuse to fulfill new orders without payment of its 503(b)(9) Claims. Such refusal could negatively affect the Debtors' estates as the Debtors' business depends on the steady flow of medical equipment and supplies to provide patient care.

37. Certain 503(b)(9) Claimants supply goods or materials that are critical to the Debtors' ongoing operations. Even though the manufacture of certain goods, such as

prescription medicine or bespoke healthcare products, may be completed, 503(b)(9) Claimants may refuse to ship postpetition unless the Debtors pay some or all of their prepetition claims. Any interruption in the flow of these goods would be highly disruptive to the Debtors' operations.

38. In light of these consequences, the Debtors believe that payment of 503(b)(9) Claims is essential to avoid disruptions to the Debtors' operations. The Debtors believe that all of the 503(b)(9) Claims are also Critical Vendor Claims or Lien Claims, and have been characterized as such for purposes of this Motion. However, to the extent that a 503(b)(9) Claim is not otherwise classified as Critical Vendor Claim or Lien Claim, the Debtors seek authority to pay any undisputed 503(b)(9) Claims. The Debtors do not seek to accelerate or modify existing payment terms with respect to any 503(b)(9) Claims. Rather, the Debtors will pay the applicable 503(b)(9) Claims as they come due and in the ordinary course of business. The Debtors estimate that, as of the Petition Date, approximately \$3,406,000 is outstanding on account of the 503(b)(9) Claims, approximately \$2,620,000 of which is due or will become due during the Interim Period.

**Proposed Conditions to Receiving Payment**

39. To minimize the amount of payments required, the Debtors will utilize a payment protocol (the "**Payment Protocol**") to identify particular Trade Claimants and pay Trade Claims. The Debtors' Payment Protocol can be generally summarized as follows:

- i. All aspects of any proposed payment to a Trade Claimant will be scrutinized for, among other things, the amount of the payment at issue, the terms offered by the particular vendor, and the business need for the goods or services at issue.
- ii. Requests for Trade Claimant treatment, or suppliers refusing shipment due to non-payment of prepetition claims, will be received by a team consisting of the Debtors' Head of Procurement, Chief Financial Officer, and Treasurer, and professionals from the Debtors' financial advisors and restructuring counsel (collectively, the "**Trade Vendor Team**"). The Trade Vendor Team will also be responsible for approving payments,



reporting on executed payments, and negotiating and approving Trade Agreements (as defined below).

- iii. Unless otherwise agreed by the Trade Vendor Team, all proposed payments must be documented pursuant to an executed Trade Agreement.
- iv. Payment may be remitted by the Debtors when the Payment Protocol has been completed and upon presentation of completed documentation.
- v. The Debtors shall provide not less than 48 hours' notice to (email shall suffice), and shall consult with, the advisors for the Ad Hoc First Lien Group prior to making any payment to a Trade Claimant, or entering into a Trade Agreement that would result in the payment of a Trade Claim, in each case, in an amount in excess of \$100,000 in the aggregate.

40. Although the Debtors have effectively “pre-screened” certain vendors who have satisfied the criteria for Trade Claimant treatment, the Debtors are keenly aware they must be prepared to address new or additional exigencies should they emerge, particularly in light of the size and scope of the Debtors’ operations. Thus, the Debtors’ Payment Protocol includes specific processes by which vendors may be designated as Trade Claimants (including as “Critical Vendors”) on a case-by-case basis.

#### **Customary Trade Terms**

41. The Debtors propose to use commercially reasonable efforts to require each Trade Claimant to provide the most favorable trade terms, practices, and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs) in place in the twenty-four (24) months prior to the Petition Date (collectively, the “**Customary Trade Terms**”) in exchange for the payment of such Trade Claimant’s Trade Claims. Thus, where appropriate, the Debtors seek authority, but not direction, to require as a condition to payment of a Trade Claim that the applicable Trade Claimant (including a 503(b)(9) Claimant) enter into a trade agreement, substantially in the form attached hereto as **Exhibit C** (each, a “**Trade Agreement**”). A Trade Agreement, once agreed to and accepted by a Trade

Claimant, will be a legally binding contractual relationship between the parties governing the commercial trade relationship as provided therein.

42. The Debtors also seek limited authority to pay Trade Claimants in the event no Trade Agreement is executed or if the Debtors determine, in their reasonable business judgment, that a formal Trade Agreement is prohibitive or unnecessary to provide for the continued provision of goods or services on a postpetition basis; *provided, that*, unless otherwise agreed to by the Debtors, if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services on Customary Trade Terms (regardless of whether a Trade Agreement has been executed), and subject to any Trade Agreement that may be executed, (i) such payment may be deemed to be an improper postpetition transfer on account of a prepetition claim, and therefore will be immediately recoverable by the Debtors in cash upon written request; (ii) upon recovery by the Debtors, any prepetition claim of such party will be reinstated as if the payment had not been made; and (iii) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, recoupments, claims, provisions for payment of any claims, or otherwise.

### **Relief Requested Should Be Granted**

#### **A. Payment of Trade Claims Is Warranted under Sections 363(b) and 105(a) of the Bankruptcy Code and the Doctrine of Necessity**

43. A bankruptcy court may authorize a debtor to pay certain prepetition obligations pursuant to section 363(b) of the Bankruptcy Code. *See* 11 U.S.C. § 363(b)(1). Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice

and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1). To approve the use of assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, courts require only that the debtor “show that a sound business purpose justifies such actions.” *Culp v. Stanziale (In re Culp)*, 550 B.R. 683, 697 (D. Del. 2015) (quoting *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted)); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Filene’s Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at \*12 (Bankr. D. Del. Apr. 29, 2014) (quoting *In re MF Global, Inc.*, 467 B.R. 726, 730 (Bankr. S.D.N.Y. 2012) (quoting *Comm. of Asbestos-Related Litigants and/or Creditors (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted))); *see also Stanziale v. Nachtoml (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

44. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); *see In re Ionosphere Clubs*, 98 B.R. 174–75 (Bankr. S.D.N.Y. 1989) (applying section 105(a) to justify an order authorizing the payment of certain prepetition wages, salaries, medical benefits, and business expense claims to debtor’s employees). Section 1107(a)

of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to act as a fiduciary “to protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (internal quotations omitted)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 233 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”).

45. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor’s business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Energy Future Holdings Corp.*, 561 B.R. 630, 642 (Bankr. D. Del. 2016) (validating that under the doctrine of necessity, debtors may pay prepetition claimants where such claimants would otherwise “not supply services or material essential to the conduct of the business until” receiving payment of their prepetition claims); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is the standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

46. Further, in a long line of well-established cases, courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C&S W.R. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of the continuance of [crucial] business relations”); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (extending the doctrine for payment of prepetition claims beyond railroad reorganization cases), *cert. denied*, 325 U.S. 873 (1945); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–89 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

47. This “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the Court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston & Me Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing “existence of a judicial power to authorize trustees . . . to pay claims . . . [for] goods or services indispensably necessary” to a debtor's continued operation); *In re Structurlite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988) (“[A] *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.”). The rationale for the doctrine of necessity is consistent with the paramount goal of chapter 11: “facilitating the

continued operation and rehabilitation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

48. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates and patients, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. The authority to satisfy Trade Claims in the initial days of these chapter 11 cases without disrupting the Debtors’ operations will maintain the integrity of the Debtors’ medical centers, the high standard of patient care, preserve the value of the Debtors’ estates, and allow the Debtors to efficiently administer these chapter 11 cases. Failure to pay these claims would jeopardize patient care and destroy value that would otherwise inure to the benefit of the Debtors’ estates.

49. Moreover, allowing the Debtors to pay Trade Claims, including Critical Vendor Claims, is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999). Accordingly, authorizing the Debtors to pay prepetition amounts related to Trade Claims is in the best interests of the Debtors, their estates, and their economic stakeholders.

50. Indeed, the Debtors submit that *all* of the Debtors’ creditors will benefit if the Court grants the requested relief. A slight disruption to the goods and services provided by Trade Claimants could risk the health of the Debtors’ patients, disrupt important relationships with patients, and erode the value of the Debtors’ estates. The resulting harm to the Debtors’ estates would undoubtedly far exceed the Critical Vendor Cap.

51. The Debtors require the provision of goods and services provided by Trade Claimants to continue operating their business and maintain operational stability. Without the products and services provided by Trade Claimants, the Debtors could be forced to unexpectedly halt operations while they search for substitute vendors and service providers, and may be forced to forego existing favorable trade terms as a result of their haste to find new vendors, preventing the Debtors from capturing revenue. Trade Claims must be processed quickly and timely, as any delay in scheduled payment could risk disruption to the business. Any such disruption to the provision of goods and services provided by Trade Claimants could jeopardize the Debtors' ability to provide care for their patients and pay for physicians, significantly decreasing the value of the Debtors' business, which could impair stakeholder value at the outset of these chapter 11 cases. What is more, the Debtors require a steady stream of goods and services from the Critical Vendors to maintain ordinary-course operations and to continue to provide high-quality care to patients. Without the goods and services provided by Critical Vendors, the Debtors could be forced to halt operations while they search for substitute vendors and service providers, which would immediately and adversely impact patient care and the value of the Debtors' estates.

52. In addition, the Debtors routinely do business with a number of vendors that may be able to assert a variety of statutory, common law, or possessory liens against the Debtors and their property if the Debtors fail to pay for certain goods delivered or services rendered. Under certain non-bankruptcy laws, the Lien Claimants may be able to assert liens on goods in their possession or on property they improved, as applicable, to secure payment of the charges or expenses incurred in connection with these prepetition obligations.

53. In the event these claims remain unpaid, the Lien Claimants could attempt to assert liens or otherwise impede the Debtors' use of property until their claims are satisfied and

their liens redeemed. The Lien Claimants' possession, and retention, of the Debtors' goods and supplies or enforcement of a mechanic's lien would disrupt the Debtors' operations and affect the Debtors' ability to efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors' estates in many cases would likely be greater than the applicable Lien Claims.

54. Given the nature of the goods and services provided by Trade Claimants, the consequences if Trade Claimants cease providing such goods and services to the Debtors, and the resulting loss of value to the Debtors' estates, the relief requested herein is necessary and appropriate. The Debtors' authority to address Trade Claims in the initial days of these cases will send a clear signal to their suppliers and customers that the Debtors are both willing and able to conduct business after the Petition Date. Failure to authorize the Debtors to pay Trade Claims as provided herein would jeopardize the Debtors' chapter 11 restructuring strategy, and, ultimately, the success of these chapter 11 cases.

**B. Payment of 503(b)(9) Claims Is Warranted under Section 503(b)(9) of the Bankruptcy Code**

55. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the "value of any goods received by the debtor within twenty (20) days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Payment of such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan, unless they consented otherwise. The timing of such payments also lies squarely within the Court's discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340 (KG), 2006 WL



3791955, at \*3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of [an] administrative expense claim is left to the discretion of the Court”).

56. Due to the nature of the Debtors’ business, certain of the Trade Claimants that the Debtors seek authority to pay delivered equipment, supplies, pharmaceuticals, and other goods in the ordinary course to the Debtors within the twenty (20) days prior to the Petition Date. Payment to any Trade Claimant on account of such deliveries at the onset of these chapter 11 cases merely accelerates the timing of payment and not the ultimate treatment of such claims. Accordingly, the Debtors would have to pay the Trade Claims in full, to the extent they fall within the scope of section 503(b)(9) of the Bankruptcy Code, regardless of the timing of such payment. As set forth above, the Debtors estimate that approximately \$3,406,000 of what is owed to Trade Claimants, representing approximately 7.8% of the total amount of Trade Claims, is on account of goods that were received during the twenty (20) day period before the Petition Date, and therefore, may be afforded administrative priority. Therefore, the Debtors are only requesting authority to pay approximately \$4,630,000 on account of Trade Claims that would not otherwise be entitled to priority of payment and payment in full under the Bankruptcy Code.

57. The Debtors’ ongoing ability to obtain medical equipment and other goods is key to their survival and necessary to preserve the value of their estates. Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases, the Debtors could be denied access to medical equipment and other goods necessary to maintain the Debtors’ business operations and maximize the value of the Debtors’ estates.

**C. Payment of Trade Claims Is in Furtherance of the Debtors’ Fiduciary Duties Under Sections 1107(a) and 1108 of the Bankruptcy Code.**

58. The Debtors, operating their business as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate

and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). The duty “to protect and preserve the estate, including an operating business’s going-concern value” is implicit in the duties of chapter 11 debtors in possession. *Id.*

59. Courts have noted that there are instances in which debtors may fulfill their fiduciary duties only “by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duties when the payment “is the only means to effect a substantial enhancement of the estate,” and also when the payment was to the “sole suppliers of a given product.” *Id.* at 497–98.

60. The *CoServ* court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty. First, it must be critical that the debtor deal with the claimant. *See id.* at 498. Second, unless it deals with the claimant, the debtor risks the probability of harm or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. *See id.* Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim. *See id.* at 499. Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate.

61. Payment of Trade Claims meets each element of the standard articulated by the court in *CoServ*. The failure to timely pay Trade Claims could jeopardize patient well-being and diminish the value of the Debtors’ estates. The harm and economic disruption that would stem

from the failure to timely pay Trade Claims is grossly disproportionate to the amount of the prepetition claims that would have to be paid. Finally, with respect to each of the classes of Trade Claims, the Debtors have determined that no practical or legal alternative to payment of Trade Claims exists, and continued partnership with Trade Claimants is necessary to avoid significant diminution in value of the Debtors' estates. The Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code through payment of Trade Claims.

**Applicable Financial Institutions  
Should Be Authorized to Receive, Process, Honor, and  
Pay Checks Issued and Transfers Requested to Pay Trade Claims**

62. The Debtors request that the Court authorize applicable financial institutions (the “**Banks**”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested by or on behalf of the Debtors relating to the obligations contemplated in this Motion, to the extent that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payment. The Debtors represent that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payment of Trade Claims. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently. Any financial institution may rely on the representations of the Debtors as to which checks are issued or wire transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this Motion without any duty of further inquiry. The Debtors also seek authority, but not direction, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or funds transfer requests on account of Trade Claims dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

**Bankruptcy Rule 6003(b) Has Been Satisfied**

63. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” prior to twenty-one (21) days after the Petition Date. Fed. R. Bankr. P. 6003(b). As explained above and in the Gring Declaration, the relief requested is necessary for the Debtors to operate their business in the ordinary course and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors would suffer immediate and irreparable harm if the relief sought herein is not promptly granted. The Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

**Request for Bankruptcy Rules 6004(a) and (h) Waivers**

64. To implement the foregoing successfully, the Debtors seek waivers of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the Gring Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

**Reservation of Rights**

65. Nothing contained herein is intended to be or shall be construed as (a) an implication or admission as to the validity of any claim against the Debtors or any liens satisfied pursuant to this Motion, (b) an agreement or obligation to pay any claims, (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (d) a waiver of the

Debtors' or any appropriate party in interest's rights to dispute any claim, (e) a concession by the Debtors that any lien (contractual, common, statutory, or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens are expressly reserved), (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates, (g) a waiver of the obligation of any party in interest to file a proof of claim, or (h) an approval, assumption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

### **Notice**

66. Notice of this Motion will be provided to the following parties (each as defined in the First Day Declarations): (a) the Office of the United States Trustee for the District of Delaware (Attn: Benjamin A. Hackman, Esq. (Benjamin.A.Hackman@usdoj.gov) and Jon Lipshie, Esq. (Jon.Lipshie@usdoj.gov)); (b) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (c) the Internal Revenue Service; (d) the U.S. Securities and Exchange Commission; (e) the United States Attorney's Office for the District of Delaware; (f) Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166 (Attn: Scott J. Greenberg, Esq. (SGreenberg@gibsondunn.com), Michael J. Cohen, Esq. (MCohen@gibsondunn.com), and Christina M. Brown, Esq. (Christina.Brown@gibsondunn.com)) and Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street #1700, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com) and James O'Neill, Esq. (joneill@pszjlaw.com)), as counsel to the Ad Hoc

First Lien Group; (g) ArentFox Schiff LLP, 1301 Avenue of the Americas, 42nd Floor New York, NY 10019 (Attn: Jeffrey R. Gleit, Esq. (jeffrey.gleit@afslaw.com)), as counsel to the DIP Agent; (h) Freshfields Bruckhaus Deringer US LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Mark F. Liscio, Esq. (mark.liscio@freshfields.com) and Scott D Talmadge, Esq. (scott.talmadge@freshfields.com)), as counsel to the Agent under the CS Credit Agreement; (i) Proskauer Rose LLP, 70 West Madison, Suite 3800, Chicago, IL 60602 (Attn: Evan Palenschat, Esq. (EPalenschat@proskauer.com)), as counsel to the Agent under the Side-Car Credit Agreement; (j) U.S. Bank National Association, West Side Flats 60 Livingston Ave. EP-MN-WS3C Saint Paul, MN 55107 (Attn: Global Corporate Trust Services), the Indenture Trustee under the Senior Note Indenture; (k) the Banks; (l) the state attorneys general for states in which the Debtors conduct business; and (m) any party that is entitled to notice pursuant to Local Bankruptcy Rule 9013-1(m) (collectively, the “**Notice Parties**”). Notice of this Motion and any order entered hereon will be served in accordance with Local Bankruptcy Rule 9013-1(m).

67. The Debtors respectfully submit that no further notice is required. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: February 5, 2024  
Wilmington, Delaware

/s/ James F. McCauley

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-and-

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*Proposed Attorneys for the Debtors  
and the Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
<b>In re</b>	:	<b>Chapter 11</b>
	:	
<b>CANO HEALTH, INC., et al.,</b>	:	<b>Case No. 24-10164 ( )</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
	X	

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a),  
363, AND 503(b) (I) AUTHORIZING DEBTORS TO PAY  
CERTAIN PREPETITION CLAIMS OF (A) PATIENT CARE, SAFETY,  
AND OTHER CRITICAL VENDORS, (B) LIEN CLAIMANTS AND  
(C) 503(b)(9) CLAIMANTS, AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated February 5, 2024 (the “**Motion**”)<sup>2</sup> of Cano Health, Inc. and certain its subsidiaries, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases, pursuant to sections 105(a), 363, and 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) for entry of interim and final orders (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business and consistent with customary past practice, based on their sound business judgment, certain prepetition claims of (i) Critical Vendors, (ii) Lien Claimants, and (iii) 503(b)(9) claimants, and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and §1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of

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<sup>1</sup> The last four digits of Cano Health, Inc.’s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/CanoHealth>. The Debtors’ mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the First Day Declarations and the record of the Hearing; and all objections to the relief requested in the Motion on an interim basis, if any, having been withdrawn, resolved, or overruled; and the Court having determined the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code, to pay, or cause to be paid, the Trade Claims in the ordinary course of business and consistent with customary past practice, upon such terms and in the manner provided in this Interim Order and the Motion, including the Payment Protocol to identify particular Trade Claimants and pay Trade Claims; *provided, that*, the aggregate prepetition

amounts authorized to be paid shall not exceed \$5,689,000 pending entry of a Final Order on the Motion.

3. The Debtors are further authorized, but not directed, to condition payment of a Trade Claim upon the applicable Trade Claimant's entry into a Trade Agreement substantially in the form attached to the Motion as Exhibit C; *provided, that*, the Debtors are authorized to pay Trade Claims in the event no Trade Agreement is executed if the Debtors determine, in the exercise of their reasonable business judgment, that a formal Trade Agreement is prohibitive or unnecessary. The Debtors are authorized to negotiate, modify, or amend the form of Trade Agreement in their reasonable business judgment.

4. The Debtors shall provide not less than 48 hours' notice to (email shall suffice), and shall consult with, the advisors for the Ad Hoc First Lien Group prior to making any payment to a Trade Claimant, or entering into a Trade Agreement that would result in the payment of a Trade Claim, in each case, in an amount in excess of \$100,000 in the aggregate.

5. Prior to entry of a Final Order, the Debtors shall not pay any obligations under this Interim Order unless they are due or deemed necessary to be paid in the Debtors' reasonable business judgment to ensure ongoing provision of goods or services or otherwise to avoid an adverse effect on operations.

6. If any party accepts payment pursuant to the relief requested by this Interim Order and thereafter does not continue to provide goods or services on customary trade terms (regardless of whether a Trade Agreement has been executed), and subject to any Trade Agreement that may be executed or otherwise agreed to by the Debtors, then the Debtors reserve all rights to treat any payments made pursuant to this Interim Order as an unauthorized postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors; (b) upon

recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made, pursuant to the relief request by the Motion, to such outstanding prepetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

7. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Interim Order, including the following information: (a) the names of the payee; (b) the nature, date and amount of the payment; (c) the category or type of payment as characterized in the Motion; and (d) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and counsel to the Ad Hoc First Lien Group every 30 days beginning upon entry of this Interim Order.

8. Each of the Banks at which the Debtors maintain their accounts are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated before, on, or after the Petition Date, without any duty to inquire otherwise.

9. Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and

in accordance with any interim and final orders, as applicable, authorizing the Debtors' use of cash collateral and/or post-petition debtor-in-possession financing (such orders, the "**DIP Order**") and any budget in connection with any such use of cash collateral and/or post-petition debtor-in-possession financing. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (a) an implication or admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law, (d) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the priority of any claim against the Debtors based on goods received by the Debtors after the Petition Date but for which title to the underlying goods was transferred to the Debtors prior to the Petition Date, (e) a promise or requirement to pay any particular claim, (f) an implication or admission that any particular claim is of a type specified or deemed in the Motion or any order granting the relief requested in the Motion or a finding that any particular claim is an administrative expense claim or other priority claim, (g) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code, (h) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates, (i) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, (j) a waiver of the obligation of any party in interest to file a proof of claim,

or (k) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

11. The Debtors are authorized to issue postpetition checks or to effect postpetition funds transfer requests in replacement of any checks or funds transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

12. Nothing herein shall impair or prejudice the Debtors' or any other party in interest's ability to contest the extent, perfection, priority, validity, or amounts of any Lien Claims or liens held by any Lien Claimant, and the rights of all parties to contest the extent, validity, or perfection or seek the avoidance of all such liens or the priority of such Lien Claims are fully preserved.

13. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

14. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

15. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Bankruptcy Rule 9013-1(m).

16. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

17. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on \_\_\_\_\_, 2024, at \_\_\_\_\_ (Eastern Time) and any

objections or responses to the Motion shall be in writing, filed with the Court, and served by no later than **4:00 p.m. (Eastern Time) on \_\_\_\_\_, 2024** on the following:

- a. proposed attorneys for the Debtors: (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com), Jessica Liou, Esq. (jessica.liou@weil.com), Matthew P. Goren, Esq. (matthew.goren@weil.com), and Rachael Foust, Esq. (rachael.foust@weil.com)); and (ii) proposed co-counsel for the Debtors: Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Michael J. Merchant, Esq. (merchant@RLF.com), and Amanda R. Steele, Esq. (steele@rlf.com));
- b. counsel to the DIP Agent: ArentFox Schiff LLP, 1301 Avenue of the Americas, 42nd Floor New York, NY 10019 (Attn: Jeffrey R. Gleit, Esq. (jeffrey.gleit@afslaw.com));
- c. counsel to the Ad Hoc First Lien Group: Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166 (Attn: Scott J. Greenberg, Esq. (SGreenberg@gibsondunn.com), Michael J. Cohen, Esq. (MCohen@gibsondunn.com), and Christina M. Brown, Esq. (Christina.Brown@gibsondunn.com)) and Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street #1700, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com) and James O'Neill, Esq. (joneill@pszjlaw.com));
- d. counsel to the Agent under the CS Credit Agreement: Freshfields Bruckhaus Deringer US LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Mark F. Liscio, Esq. (mark.liscio@freshfields.com) and Scott D Talmadge, Esq. (scott.talmadge@freshfields.com));
- e. counsel to the Agent under the Side-Car Credit Agreement: Proskauer Rose LLP, 70 West Madison, Suite 3800, Chicago, IL 60602 (Attn: Evan Palenschat, Esq. (EPalenschat@proskauer.com));
- f. Indenture Trustee under the Senior Note Indenture: U.S. Bank National Association, West Side Flats 60 Livingston Ave. EP-MN-WS3C Saint Paul, MN 55107 (Attn: Global Corporate Trust Services); and
- g. the Office of the United States Trustee for the District of Delaware: 844 King Street, Suite 2207, Lockbox 35, Wilmington Delaware 19801 (Attn: Benjamin A. Hackman, Esq. (Benjamin.A.Hackman@usdoj.gov) and Jon Lipshie, Esq. (Jon.Lipshie@usdoj.gov)).

18. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Interim Order.

19. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.



**Exhibit B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
<b>In re</b>	:	<b>Chapter 11</b>
	:	
<b>CANO HEALTH, INC., et al.,</b>	:	<b>Case No. 24-10164 ( )</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
	X	

**FINAL ORDER PURSUANT TO  
11 U.S.C. §§ 105(a), 363, AND 503(b) (I) AUTHORIZING DEBTORS  
TO PAY CERTAIN PREPETITION CLAIMS OF (A) PATIENT CARE,  
SAFETY, AND OTHER CRITICAL VENDORS, (B) LIEN CLAIMANTS  
AND (C) 503(b)(9) CLAIMANTS, AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated February 5, 2024 (the “**Motion**”)<sup>2</sup> of Cano Health, Inc. and certain of its subsidiaries, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases, pursuant to sections 105(a), 363, 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) for entry of a final order (this “**Final Order**”) (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business and consistent with customary past practice, based on their sound business judgment, certain prepetition claims of (i) Critical Vendors, (ii) Lien Claimants, and (iii) 503(b)(9) claimants, and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and §1334, and the *Amended Standing Order of Reference* from the

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<sup>1</sup> The last four digits of Cano Health, Inc.’s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/CanoHealth>. The Debtors’ mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on a final basis, if necessary; and the Court having entered an order granting the relief requested in the Motion on an interim basis; and upon the First Day Declarations, the record of the Interim Hearing, the Final Hearing, if any, and all of the proceedings had before the Court; and all objections to the relief requested in the Motion on a final basis, if any, having been withdrawn, resolved, or overruled; and the Court having determined the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Motion is granted on a final basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code, to pay, or cause to be paid, the Trade Claims in the ordinary course of business and consistent with customary past practice, upon such terms and in the manner provided in this Final Order and the Motion, including the Payment Protocol to identify

particular Trade Claimants and pay Trade Claims; *provided, that*, the aggregate prepetition amounts authorized to be paid pursuant to this Final Order shall not exceed \$8,036,000.

3. The Debtors are further authorized, but not directed, to condition payment of a Trade Claim upon the applicable Trade Claimant's entry into a Trade Agreement substantially in the form attached to the Motion as Exhibit C; *provided, that*, the Debtors are authorized to pay Trade Claims in the event no Trade Agreement is executed if the Debtors determine, in the exercise of their reasonable business judgment, that a formal Trade Agreement is prohibitive or unnecessary. The Debtors are authorized to negotiate, modify, or amend the form of Trade Agreement in their reasonable business judgment.

4. The Debtors shall provide not less than 48 hours' notice to (email shall suffice), and shall consult with, the advisors for the Ad Hoc First Lien Group prior to making any payment to a Trade Claimant, or entering into a Trade Agreement that would result in the payment of a Trade Claim, in each case, in an amount in excess of \$100,000 in the aggregate.

5. If any party accepts payment pursuant to the relief requested by this Final Order and thereafter does not continue to provide goods or services on customary trade terms (regardless of whether a Trade Agreement has been executed), and subject to any Trade Agreement that may be executed or otherwise agreed to by the Debtors, then the Debtors reserve all rights to treat any payments made pursuant to this Final Order as an unauthorized postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made, pursuant to the relief request by the Motion, to such outstanding prepetition balance and such supplier or

vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

6. The Debtors shall maintain a matrix/schedule of payments made pursuant to this the Interim Order or this Final Order, including the following information: (a) the names of the payee; (b) the nature, date and amount of the payment; (c) the category or type of payment as characterized in the Motion; and (d) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and counsel to the Ad Hoc First Lien Group every 30 days.

7. Each of the Banks at which the Debtors maintain their accounts are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated before, on, or after the Petition Date, without any duty to inquire otherwise.

8. Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, authorizing the Debtors' use of cash collateral and/or post-petition debtor-in-possession financing (such orders, the "**DIP Order**") and any budget in connection with any such use of cash collateral and/or post-petition debtor-in-

possession financing. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

9. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, is intended to be or shall be construed as (a) an implication or admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law, (d) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the priority of any claim against the Debtors based on goods received by the Debtors after the Petition Date but for which title to the underlying goods was transferred to the Debtors prior to the Petition Date, (e) a promise or requirement to pay any particular claim, (f) an implication or admission that any particular claim is of a type specified or deemed in the Motion or any order granting the relief requested in the Motion or a finding that any particular claim is an administrative expense claim or other priority claim, (g) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code, (h) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates, (i) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, (j) a waiver of the obligation of any party in interest to file a proof of claim, or (k) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all

parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

10. The Debtors are authorized to issue postpetition checks or to effect postpetition funds transfer requests in replacement of any checks or funds transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

11. Nothing herein shall impair or prejudice the Debtors' or any other party in interest's ability to contest the extent, perfection, priority, validity, or amounts of any Lien Claims or liens held by any Lien Claimant, and rights of all parties to contest the extent, validity, or perfection or seek the avoidance of all such liens or the priority of such Lien Claims are fully preserved.

12. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

13. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Bankruptcy Rule 9013-1(m).

14. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Final Order.

16. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

**Exhibit C**

**Form Trade Agreement**



## TRADE AGREEMENT

Cano Health, Inc. and certain of its subsidiaries (the “**Company**”), on the one hand, and the supplier identified in the signature block below (“**Supplier**”), on the other hand, hereby enter into the following trade agreement (this “**Trade Agreement**”) dated as of the date in the Supplier’s signature block below.

### Recitals

WHEREAS on [\_\_\_], 2024 (the “**Petition Date**”), Cano Health, Inc. and certain of its subsidiaries (collectively, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

WHEREAS on [\_\_\_], 2024, the Court entered the *[Interim / Final] Order Pursuant to 11 U.S.C. §§ 105(a), 363, and 503(b) (I) Authorizing Debtors to Pay Certain Prepetition Claims of (A) Patient Care, Safety, and Other Critical Vendors, (B) Lien Claimants and (C) 503(b)(9) Claimants, and (II) Granting Related Relief* (together, with the [interim / final] order granting similar relief, the “**Vendor Order**”)¹ [Docket No. [\_\_\_]] authorizing the Debtors on a[n] [interim / final] basis, under certain conditions, to pay the prepetition claims of certain suppliers, including Supplier, subject to the terms and conditions set forth therein.

WHEREAS prior to the Petition Date, Supplier delivered goods to and/or performed services for the Company, and the Company paid Supplier for such goods and/or services, according to Customary Trade Terms (as defined herein).

WHEREAS the Company and Supplier (each, a “**Party**” and, collectively, the “**Parties**”) agree to the following terms as a condition of payment on account of certain prepetition claims Supplier may hold against the Company.

### Agreement

1. Recitals. The foregoing recitals are incorporated herein by reference as if set forth at length herein.

2. Supplier Payment. Supplier represents and agrees that, after due investigation, the sum of all amounts currently due and owing by the Company to Supplier is \$[●] (the “**Agreed Supplier Claim**”). Following execution of this Trade Agreement, the Company shall, in full and final satisfaction of the Agreed Supplier Claim, pay Supplier \$[●] on account of its claim (the “**Supplier Payment**”) (without interest, penalties, or other charges), as such amounts become due and payable in the ordinary course.

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¹ Capitalized terms used but not defined herein shall have the meanings set forth in the Vendor Orders.

3. Timing of Payments. The Company shall make the Supplier Payment in accordance with the following schedule: [●]

4. Agreement to Supply.

a. Supplier shall supply goods and/or perform services to or for the Company, and the Company shall accept and pay for goods and/or service from Supplier, for the Duration of the Cases (as defined below), on trade terms (the “**Customary Trade Terms**”) that are at least as favorable to the Company as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances (as may be incorporated or contemplated by any agreements between the Parties or based on historic practice, as applicable), product mix, availability, and other programs) in place in the twenty-four (24) months prior to the Petition Date except for any partial payments or other payments (or assurances) Company made with respect to any unfinished product.

b. “**Duration of the Cases**” means the earlier of: (i) the effective date of a chapter 11 plan in the Debtors’ chapter 11 case; (ii) the closing of a sale of all or a material portion of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code resulting in a cessation of the Debtors’ business operations; (iii) conversion of the Debtors’ chapter 11 cases to cases under chapter 7 of the Bankruptcy Code; or (iv) a default under the Debtors’ debtor-in-possession financing facilities, if any, that results in the Company losing access to funds available under any such facility.

c. The Customary Trade Terms may not be modified, adjusted, or reduced in a manner adverse to the Company except as agreed-to in writing by the Parties. For the avoidance of doubt, such Customary Trade Terms include, but are not limited to:

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d. Supplier shall continue to honor any existing allowances, credits, contractual obligations, or balances that accrued as of the Petition Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

5. Other Matters.

a. Supplier agrees that it shall not require a lump-sum payment upon the effective date of a plan in the Debtors’ chapter 11 cases on account of any outstanding administrative expense claims Supplier may assert arising from the delivery of postpetition goods or services, to the extent that payment of such claims is not yet due. Supplier agrees that such claims will be paid in the ordinary course of business after confirmation of a plan pursuant to the Customary Trade Terms then in effect. The Supplier Payment will be made concurrently with payment of other outstanding administrative claims as provided in a confirmed plan.

b. Supplier will not separately seek payment from the Debtors on account of any prepetition claim (including, without limitation, any reclamation claim, or any claim pursuant to section 503(b)(9) of the Bankruptcy Code) outside the terms of this Trade Agreement or a plan confirmed in the Company’s chapter 11 cases.

c. Supplier will not file or otherwise assert against the Debtors, their assets, or any other affiliated person or entity or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to Supplier by the Debtors arising from prepetition agreements or transactions. Furthermore, if Supplier has taken steps to file or assert such a lien before entering into this Trade Agreement, Supplier will promptly take all necessary actions to remove such liens.

6. Breach.

a. In the event that the Company pays Supplier its Supplier Payment and Supplier is determined to have breached this Trade Agreement (a “**Supplier Breach**”), upon the Company’s written notice to Supplier, Supplier shall promptly pay to the Company immediately available funds in an amount equal to, at the election of the Company, the Supplier Payment or any portion of the Supplier Payment which cannot be recovered by the Company from the postpetition receivables then owing to Supplier from the Company.

b. In the event that the Debtors recover a portion or all of the Supplier Payment pursuant to Section 6(a) hereof or otherwise, the Agreed Supplier Claim shall be reinstated as if the Supplier Payment had not been made, to the extent of the recovery of the Supplier Payment.

c. Supplier agrees and acknowledges that irreparable damage would occur in the event of a Supplier Breach and remedies at law would not be adequate to compensate the Company. Accordingly, Supplier agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to seek an injunction or injunctions to prevent breaches of the provisions of this Trade Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Trade Agreement. Supplier hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance, or other equitable remedies. Notwithstanding the foregoing, in the event of a specific performance action by the Company, the Supplier retains its right to seek adequate assurance of payment and other similar relief pursuant to applicable law.

d. In the event the Company fails to pay for goods or services delivered postpetition in accordance with this Trade Agreement, and the Company fails to cure such default within ten (10) days after receiving notice of such default, the Supplier shall have the right to terminate this Trade Agreement, in which event the Supplier (i) shall have no obligation to continue to provide goods or services to the Company, and (ii) reserves its rights to file a timely proof of claim for any alleged unpaid amounts of the Supplier Payment.

7. Notice.

If to Supplier, then to the person and address identified in the signature block hereto.

If to Company:

Cano Health, Inc.  
9725 NW 117th Avenue, Suite #200  
Miami, FL 33178  
Attn: Jonathan Biggert  
E-mail: Jonathan.Biggert@canohealth.com

and

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Matthew P. Goren  
Ian Roberts  
E-mail: Matthew.Goren@weil.com  
Ian.Roberts@weil.com  
Facsimile: (212) 310-8007

and

Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Attn: Michael J. Merchant  
Amanda R. Steele  
E-mail: merchant@rlf.com  
steele@rlf.com

8. Representations and Acknowledgements. The Parties agree, acknowledge and represent that:

a. the Parties have reviewed the terms and provisions of the Vendor Orders and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Vendor Orders;

b. any payments made on account of the Agreed Supplier Claim shall be subject to the terms and conditions of the Vendor Orders;

c. if Supplier refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Vendor Orders, the Bankruptcy Code, or applicable law; and

d. in the event of disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, in which event, no action may be taken by either Party, including, but not limited to, the discontinuing of shipment of goods from Supplier to the Company, until a ruling of the Court is obtained.

9. Confidentiality. In addition to any other obligations of confidentiality between Supplier and Company, Supplier agrees to hold in confidence and not disclose to any party: (i) this Trade Agreement or any of its terms; (ii) any and all payments made by the Company pursuant to this Trade Agreement; (iii) the terms of payment set forth herein; and (iv) the Customary Trade Terms (collectively, the “**Confidential Information**”); *provided, that*, if any party seeks to compel Supplier’s disclosure of any or all of the Confidential Information, through judicial action or otherwise, or Supplier intends to disclose any or all of the Confidential Information, Supplier shall immediately provide the Company with prompt written notice so that the Company may seek an injunction, protective order or any other available remedy to prevent such disclosure; *provided further, that*, if such remedy is not obtained, Supplier shall furnish only such information as Supplier is legally required to provide.

10. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Trade Agreement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Trade Agreement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Trade Agreement.

b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them. This Trade Agreement may not be changed, modified, amended or supplemented, except in a writing signed by both Parties.

c. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.

d. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

e. The Parties hereby submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement.

f. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature page follows]

AGREED AND ACCEPTED AS OF THE DATE SET FORTH BELOW:

**[COMPANY]**

**[SUPPLIER]**

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By:  
Title:

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By:  
Title:  
Address:

Date: